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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY - TRENTON**

CHARLES NOVINS, ESQ. P.C. and
CHARLES NOVINS, Personally,

Plaintiffs,

V.

Kevin A. Cannon, et al.

Defendants

Civil Action No. 09-CV-5354-AET-DEA

**NOTICE OF MOTION FOR
RECONSIDERATION OF
MAGISTRATE ARPERT'S
FEBRUARY 10, 2011
SCHEDULING ORDER
UNDER *FED. R. Civ. P. 59(e)*
AND *L. R. Civ. P. 7.1(i)***

(Document Electronically Filed)

To:

Charles Novins, Esq.
54 East Water Street
Toms River, New Jersey 08754

Joseph Manzo, Esq.
40 Baldwin Road
Parsippany, New Jersey 07054

PLEASE TAKE NOTICE that on Monday, March 21, 2011 at a time to be determined by the Court, the Law Office of Dennis J. Duncan, LLC, shall move pursuant to *Fed. R. Civ. P.* 59(e) and *L. R. Civ. R.* 7.1(i) before the Hon. Douglas A. Arpert, United States Magistrate Judge for the District of New Jersey, at the Clarkson S.

Fisher U.S. Courthouse, 402 E. State Street, Trenton, New Jersey the United States Federal Court House in Trenton, New Jersey, 08608 for the entry of an order affixing the fact discovery end date in this matter to February 9, 2011 which would annul paragraph 2 of Magistrate Judge Arpert' February 10, 2010 Scheduling Order (docket item no. **69**), orally conveyed to the parties at the February 9, 2011 In Person Status Conference and entered on the record on February 14, 2011 and extended/ affixed the discovery end date in this matter to March 25, 2011.

PLEASE TAKE FURTHER NOTICE that in support of this application, the Law Office of Dennis J. Duncan, LLC, Esquire, shall rely upon those documents contained in the record below that are identified in the attached Designation of Record on Appeal. No transcripts of the February 9, 2011 In Person Status Conference was recorded and therefore not available. Movant has prepared a proposed Agreed Statement of the February 9, 2011 proceeding from the best available means pursuant to *Fed. R. App. P.* 10(c). The Agreed Statement was prepared in consultation with Joseph A. Manzo, Esquire, Attorney for Defendants, Kevin A. Cannon and Carl R. Osterwald and Yvonne Osterwald. Both Movant and Mr. Manzo have stipulated to the Agreed Statement. The original Agreed Statement will be served on Plaintiffs together with the motion papers to allow them to stipulate and/or present objections or propose amendments pursuant to *Fed. R. App. P.* 10(c). Plaintiffs is asked to return the original Agreed Statement (whether stipulated or not) to Magistrate Douglas Arpert for settlement and approval and if thereafter so approved included by the district clerk in the

record of appeal. The designation of the records is attached to this notice which obviously does not yet include the Rule 10(c) statement.

Counsel shall also rely upon the brief accompanying this Notice.

A proposed form of order is attached hereto.

The undersigned hereby requests oral argument.

Law Office of Dennis J. Duncan, LLC
Attorney for Defendant,
Richard "Vince" Lamb

By: /s/ Dennis J. Duncan
Dennis J. Duncan

Dated: February 25, 2011

Designation of Record on Appeal

The Law Office of Dennis J. Duncan, LLC, with reference to its Motion to Reconsider the February 10, 2011 Scheduling Order of the Hon. Douglas E. Arpert Douglas, Magistrate Judge, which in paragraph two (2) extended/affixed the fact discovery end date in this matter to March 25, 2011, designates the following items to be included in the record:

Item No.	Docket No.	Document Description	Courtesy Copy Appendix Pages
1.	1-6	Novin's Complaint, dated February 13, 2009	Pa-1 to Pa 21
2.	1-7	Track Assignment Notice <u>Novins v. Cannon</u> , OCN-L-705-09, New Jersey Superior Court, Ocean County Law Division, dated March 3, 2009	Pa - 22
3.	1-8	Kevin A, Cannon's Answer, dated April 26, 2009	Pa-23 to Pa-46
4.	1-11	Novin's Deposition subpoena of Carl R. Osterwald and Yvonne S. Osterwald, dated May 18, 2009	Pa-47
5.	1-12	Novin's Answer to Carl R. Osterwald and Yvonne Osterwald Counterclaim, dated May 26, 2009	Pa-48
6.	1-13	Novin's Answer and Counterclaim of Dr. Lamb, dated June 12, 2009	Pa-49 to Pa - 97
7.	1-14	Entry of Default as to Law Office Charles Novins, Esq. PC as to Counterclaimant Osterwald, dated June 17, 2009	Pa -98 to Pa -104
8.	1-16	Novin's Answer to Dr. Lamb Counterclaim, dated June 24, 2009	Pa -105 to Pa - 106
9.	1-30	Entry of Default as to Law Office Charles Novins, Esq. PC as to Counterclaimant Dr. Lamb, Dated September 8, 2009	Pa - 107 to Pa -114
		Order Dismissing Plaintiffs complaint without prejudice as to Osterwald and Cannon, dated	Pa – 115 to Pa -116

10.	1-33	September 25, 2009	
11.	36-14	Novins's December 10, 2009 Discovery Plan	Pa -117 to Pa - 121
12.	63-4	Proposed Joint Discovery Plan of Defendants Osterwald, Lamb, Cannon and Fries and Kirk	Pa - 122 to Pa - 128
13.	3	Pretrial Scheduling Order, Hon. Magistrate Judge Arpert, Dated December 11, 2009	Pa - 129 to Pa - 131
14.	37-17	Letter to Magistrate Judge Arpert dated January 29,	Pa - 132 to Pa - 134
15.	15	Novins's Letter in Opposition to Defendant's 12(c) Motion, dated February 12, 2010 and Filed February 16, 2010	Pa - 135 to Pa -139
16.	16	Amended Scheduling Order, Hon. Magistrate Judge Arpert, dated April 15, 2010	Pa - 139
17.	18	Opinion and Order of Hon Anne E. Thompson, dated April 27, 2010	Pa - 140 to Pa - 145
18.	19	Discovery Order, , Hon. Magistrate Judge Arpert, dated May 10, 2010	Pa - 146 to Pa - 147
19.	20, 20-1, 20-2, 20-3	Novin's Notice of Motion to Vacate Default as to Counterclaimant Osterwalds, dated May 14, 2010 and Declaration of Charles Novins, dated May 14, 2010	Pa - 148 to Pa - 152
20.	20-2, 20-3	Novin's Amended Answer to Carl R. and Yvonne S. Osterwalds Counterclaim and Plaintiff's proposed form of order, dated May 14, 2010	Pa - 153 to Pa - 154
21.	28	Order denying Plaintiff's motion to Vacate Default, dated June 17, 2010	Pa - 155
22.	30	Scheduling Order, Hon. Magistrate Judge Arpert, dated June 22, 2010	Pa - 156
23.	31	Novins's Fed. R. Civ. P. 7.1 Disclosure Statement, dated June 25, 2010	Pa -157 to Pa - 158
24.	32, 32-1, 32-2	Osterwald's Motion to deem paragraphs 1 through 23 as admitted pursuant to Fed. R. Civ. P. 8(c), dated July 7, 2010	Pa -159 to Pa - 184
25.	33	Novin's Notice of Motion to Vacate Default as to Counterclaimant Lamb, dated May 14, 2010	Pa - 185 to Pa - 189
26.	33-1	Novin's Amended Answer to Dr. Lamb's Counterclaim, Dated July 7, 2010	Pa - 190 to Pa - 194
27.	33-2,	Declaration of Charles Novins and proposed	Pa - 195 to Pa - 202

	33-3, 33-4, 33-5	form of order, Exhibits dated July 7, 2010	
28.	36-1	Declaration of Dennis J. Duncan in Support of Motion to Sanction Plaintiffs for failing to comply with Rule 26(A), dated July 12, 2010	Pa – 203 to Pa - 214
29.	37-1	Declaration of Dennis J. Duncan in Support of Motion to Compel Plaintiffs to Provide More Specific Answers to Interrogatories, dated July 12, 2010	Pa – 215 to Pa - 222
30.	40, 40-1	Letter to Hon. Anne E. Thompson and Exhibit A, dated July 16, 2010	Pa – 223 to Pa - 228
31.	46, 46-1, 46-2, 46-3, 46-4, 46-5	Letter to Hon. Magistrate Arpert by Osterwalds joining Dr. Lamb's Sanction Motion for failing to comply with Rule 26 disclosure and Exhibit A to d, dated July 23, 2010	Pa – 229 to Pa - 236
32.	50, 50-1, 50-2, 50-3, 50-4, 50-5, 50-6, 50-7	Letter to Hon. Anne E. Thompson joining the Osterwald's Motion to deem paragraph 1-32 of Dr. Lamb's complaint admitted and opposition to Novins Motion to vacate default, August 2, 2010	Pa – 237 to Pa - 260
33.	51	Order Compelling Plaintiffs to Provide more Specific Answers to Interrogatories, Dated August 16, 2010	Pa – 261 to Pa - 262
34.	52	Order Sanctioning Plaintiffs for not Complying with Fed. R. Civ. P. 26(g), dated August 16, 2010	Pa – 263 to Pa - 264
35.	53	Novin's Report to the Court, dated September 1, 2010	Pa – 265 to Pa - 267
36.	54	Opinion & Order, Hon. Anne E. Thompson, dated September 2, 2010	Pa – 268 to Pa - 273
37.	55, 55-1, 55-2, 55-3, 55-4	Letter to Hon. Magistrate Judge Arpert, and exhibits dated September 7, 2010	Pa – 274 to Pa - 301

38.	56	Affidavit of Services by Dennis J. Duncan and Exhibits, dated September 15, 2010	Pa – 302 to Pa - 316
39.	59	Novin's objection to Dr. Lamb's Fee Application and Exhibits A – C, dated October 6, 2010	Pa – 317 to Pa - 326
40.	60	Dr. Lamb's second request to file a dispositive motion, dated October 11, 2010	Pa – 327 to Pa - 328
41.	61-1	Dr. Lamb's reply to Novin's October 6, 2010 objection Exhibits, dated October 11, 2010	Pa – 329 to Pa - 336
42.	61-2	Second deficiency Letter to Charles Novins regarding Dr. Lamb's Interrogatories, dated August 28, 2010	Pa – 337 to Pa - 346
43.	63	Declaration of Dennis J. Duncan, Dated January 28, 2010	Pa – 347 to Pa –358
44.	69	February 10, 2011 Scheduling Order	Pa- 359